



**STATE OF NEW JERSEY**

In the Matter of Lisa Williams,  
Assistant Training Supervisor,  
County Welfare Agency (PC0084B),  
Essex County

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

Administrative Appeal

CSC Docket No. 2022-643

**ISSUED: DECEMBER 6, 2021 (SLK)**

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Lisa Williams, represented by Lisa Maddox-Douglas, President, Public Employees Supervisors Union, appeals her non-appointment on the Assistant Training Supervisor, County Welfare Agency (PC0084B), Essex County eligible list.

By way of background, the appellant was provisionally appointed in the subject title effective December 2, 2019. Thereafter, the appellant applied to the subject examination, which had a closing date of January 21, 2020. A total of 20 employees applied and one was found eligible. Certification PL200988 was issued containing the name of the one eligible along with an eligible from a previous examination (PC2788W). Thereafter, the appellant appealed her ineligibility on the subject examination, and her appeal was granted. *See In the Matter of Lisa Williams* (CSC, December 16, 2020). Subsequently, the appellant received notice that she was being returned to her permanent title of Family Service Worker, effective January 19, 2021.<sup>1</sup> In response to the appellant’s complaint, on January 11, 2021, the appointing authority reiterated to the appellant that it was going to promote the applicant who was originally determined eligible for the subject examination and that the appellant’s return to her permanent title remained. Thereafter, the appellant filed a grievance complaining that she was not promoted to the subject title and returned to her permanent title due to “unfair discriminatory practices.” In response to the appellant’s follow-up, the appointing authority reiterated that it was going to appoint from the certification and the appellant was to be returned to her permanent title and report to her new assignment on February 1, 2021, although the record indicates

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<sup>1</sup> The County and Municipal Personnel System (CAMPS) still indicates that the appellant is provisionally serving in the subject title.

that this did not occur at that time. Thereafter, certification PL200988 was cancelled and a new certification PL210114 was issued on February 11, 2021, containing the name of the eligible who was initially determined eligible for the subject examination, who was the first ranked eligible, and the appellant, who was the second ranked eligible. Thereafter, the appointing authority informed the appellant on August 27, 2021, that she was going to be returned to her permanent title effective September 7, 2021. On August 31, 2021, the appellant filed another grievance claiming that she was “discriminatorily” denied an appointment to continue serving in the subject title. Subsequently, the appointing authority permanently appointed the first ranked eligible on certification PL210114.

On appeal, the appellant presents that as the second ranked eligible on certification PL210114, she was reachable for appointment. She highlights that she has 11 years of experience in the Division of Family Assistance and Benefits and provisionally served in the subject title for one year and nine months. She complains that the examination was an unassembled examination and used non-practical means to generate an eligible list as she claims that it has been past practice for the appointing authority to at least conduct an interview to determine who is best to fill the position. The appellant believes that the appointing authority should have requested an appointment waiver since she alleges that there were many mishandlings, administrative errors, and delays regarding the subject examination. She highlights how another employee was assumed to provisionally hold the subject title until she learned that after applying for the subject examination, she was ineligible since the subject title represented a demotion. Further, she notes how she was initially determined ineligible and then granted eligibility on appeal. The appellant states that the appointing authority incorrectly advised that it had to appoint the first ranked candidate on the list. She emphasizes that there were only two names on the list and she provisionally served in the subject title for nearly two years. The appellant believes that the appointing authority did not comply with several Civil Service rules.

Although given the opportunity, the appointing authority did not respond.

## CONCLUSION

*N.J.S.A.* 11A:4-8, *N.J.S.A.* 11A:5-7 and *N.J.A.C.* 4A:4-4.8(a)3i (the Rule of Three) allow an appointing authority to select any of the top three interested eligibles on an open competitive list provided no veteran heads the list.

*N.J.A.C.* 4A:4-6.3(b) provides, in pertinent part, that the appellant shall have the burden of proof in examination appeals.

In this matter, under the Rule of Three, the appointing authority had the discretion to permanently appoint either the first ranked candidate or the appellant,

who was the second ranked candidate, on PL210114 to a position in the subject title. The appellant complains that she should have been appointed instead of the first ranked candidate based on her 11 years of experience in the Division of Family Assistance and Benefits and her nearly two years of provisional experience in the subject title. However, a provisional appointee can be removed at any time and does not have a vested property interest in the provisional title. In other words, a provisional employee has no automatic right or expectation of achieving permanent appointment to the position to which he or she is occupying. *See O'Malley v. Department of Energy*, 109 N.J. 309 (1987). As such, an employee has no right to challenge the termination of a provisional appointment. In this case, the appointing authority appointed the higher-ranked eligible on the certification, so the appellant's termination of her provisional appointment was clearly permissible. Moreover, a candidate cannot challenge the appointment of a higher-ranked candidate and can only challenge the appointment of a lower-ranked candidate. *See In the Matter of Michael Barbato-Buckley* (CSC, decided August 16, 2017). Additionally, even if the appellant could challenge her non-appointment, although she claimed that she was not appointed due to "discrimination," she has not provided any evidence that she was not appointed due to her membership in a protected class or other invidious or illegal reason.

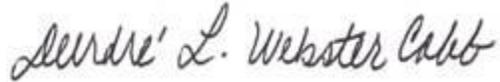
Concerning the appellant's comments that it has been the appointing authority's past practice to conduct interviews, it is within the appointing authority's discretion to choose its selection method, *i.e.*, whether or not to interview candidates, so long as that hiring decision complies with *N.J.A.C. 4A:4-4.8(a)3*. *See In the Matter of Daniel Dunn* (CSC, decided August 15, 2012). Further, even if it is true that it has been the appointing authority's "past practice" to interview candidates before making appointments, there is no obligation under Civil Service law and rules for the appointing authority to continue to use "past practice" for each appointment. Therefore, the appointing authority's decision to not interview candidates and simply appoint the highest ranked eligible was permissible, even if it mistakenly believed it was required to do so, as it complied with *N.J.A.C. 4A:4-4.8(a)3*. Moreover, there is no evidence that the method of examination was improper. Finally, regarding the appellant's comments that the appointment in question had been subject to mishandlings, administrative errors, and delays, that the appointing authority did not comply with several Civil Service rules, and the appointing authority should have requested an appointment waiver, contrary to the appellant's assertions, as there is nothing in the record that indicates that any Civil Service law or rules have been violated by the appointing authority, there would be no basis for it to request an appointment waiver.

### **ORDER**

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 1<sup>ST</sup> DAY OF DECEMBER 2021



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